



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1055/P2

CMH:wjl:tl

↑  
stays

DOA:.....Steinmetz, BB0270 - Department of Corrections to permit certain releases of persons serving bifurcated sentence

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*  
**CORRECTIONAL SYSTEM**

Under current law, a person who is convicted of a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, must serve a bifurcated sentence, which includes a term of confinement in prison and a term of extended supervision in the community. Except for a person who has been convicted of a felony that is classified as Class B or above, a person who is serving the term of confinement portion of a bifurcated sentence may petition the sentencing court to release him or her to extended supervision for the remaining term of his or her sentence if the person has a terminal condition, reaches age 65 after serving at least five years of his or her term of confinement portion, or reaches age 60 after serving at least ten years of his or her term of confinement portion. Under this bill, the petition must be submitted to DOC instead of the sentencing court.

Under current law, DOC may relieve crowding in state prisons by releasing to parole certain persons who are eligible for parole under certain conditions. This bill permits DOC to relieve crowding by releasing persons serving a bifurcated sentence to extended supervision if the prison reaches the limit set by DOC, the person is not confined following a felony assault, the person is believed to be able to live in the community without assaulting another, and the release will not be more than 12 months before the date that the person otherwise would be eligible for release to

extended supervision. If DOC releases a person, his or her term of extended supervision must be extended by the length of time he or she was originally sentenced to confinement so that the total length of the sentence does not change.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 301.03 (3) of the statutes is amended to read:

2           301.03 (3) Administer parole, extended supervision, and probation matters,  
3 except that the decision to grant or deny parole to inmates shall be made by the parole  
4 commission and the decision to revoke probation, extended supervision, or parole in  
5 cases in which there is no waiver of the right to a hearing shall be made by the  
6 division of hearings and appeals in the department of administration. The secretary  
7 may grant special action parole releases under s. 304.02. The secretary may modify  
8 a bifurcated sentence under s. 302.113 (9g) or (9h). The department shall promulgate  
9 rules establishing a drug testing program for probationers, parolees, and persons  
10 placed on extended supervision. The rules shall provide for assessment of fees upon  
11 probationers, parolees, and persons placed on extended supervision to partially  
12 offset the costs of the program.

13           **SECTION 2.** 302.113 (2) of the statutes is amended to read:

14           302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
15 section is entitled to release to extended supervision after he or she has served the  
16 term of confinement in prison portion of the sentence imposed under s. 973.01, as  
17 modified by the department under sub. (9g) or (9h) or as modified by the sentencing  
18 court under ~~sub. (9g) or~~ s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., or 973.195 (1r), if  
19 applicable.

1           **SECTION 3.** 302.113 (9g) (cm) of the statutes is amended to read:

2           302.113 **(9g)** (cm) If, after receiving the petition under par. (c), the program  
3 review committee determines that the public interest would be served by a  
4 modification of the inmate's bifurcated sentence in the manner provided under par.  
5 (f), the committee shall approve the petition for referral to the ~~sentencing court and~~  
6 ~~notify the department of its approval. The department shall then refer the inmate's~~  
7 ~~petition to the sentencing court and request the court to conduct a hearing on the~~  
8 ~~petition~~ department. If the program review committee determines that the public  
9 interest would not be served by a modification of the inmate's bifurcated sentence in  
10 the manner specified in par. (f), the committee shall deny the inmate's petition.

11           **SECTION 4.** 302.113 (9g) (d) of the statutes is amended to read:

12           302.113 **(9g)** (d) When ~~a court is notified by the~~ committee refers the petition  
13 under par. (c) to the department that it is referring to the court an inmate's petition  
14 for modification of the inmate's bifurcated sentence, the court department shall set  
15 a hearing to determine whether the public interest would be served by a modification  
16 of the inmate's bifurcated sentence in the manner specified in par. (f). The inmate  
17 and the district attorney have the right to be present at the hearing, and any victim  
18 of the inmate's crime has the right to be present at the hearing and to provide a  
19 statement concerning the modification of the inmate's bifurcated sentence. The  
20 ~~court~~ department shall ~~order such~~ give notice of the hearing date as it considers  
21 adequate to be given to the ~~department, the~~ inmate, the attorney representing the  
22 inmate, if applicable, and the district attorney. Victim notification shall be provided  
23 as specified under par. (g).

24           **SECTION 5.** 302.113 (9g) (e) of the statutes is amended to read:

1           302.113 (9g) (e) At a hearing scheduled under par. (d), the inmate has the  
2       burden of proving by the greater weight of the credible evidence that a modification  
3       of the bifurcated sentence in the manner specified in par. (f) would serve the public  
4       interest. If the inmate proves that a modification of the bifurcated sentence in the  
5       manner specified in par. (f) would serve the public interest, the ~~court~~ department  
6       shall modify the inmate's bifurcated sentence in that manner. If the inmate does not  
7       prove that a modification of the bifurcated sentence in the manner specified in par.  
8       (f) would serve the public interest, the ~~court~~ department shall deny the inmate's  
9       petition for modification of the bifurcated sentence.

10           **SECTION 6.** 302.113 (9g) (f) of the statutes is amended to read:

11           302.113 (9g) (f) ~~A court~~ The department may modify an inmate's bifurcated  
12       sentence under this section only as follows:

13           1. The ~~court~~ department shall reduce the term of confinement in prison portion  
14       of the inmate's bifurcated sentence in a manner that provides for the release of the  
15       inmate to extended supervision within 30 days after the date on which the ~~court~~  
16       ~~issues its order modifying~~ department modifies the bifurcated sentence.

17           2. The ~~court~~ department shall lengthen the term of extended supervision  
18       imposed so that the total length of the bifurcated sentence originally imposed does  
19       not change.

20           **SECTION 7.** 302.113 (9g) (g) 2. of the statutes is amended to read:

21           302.113 (9g) (g) 2. When ~~a court~~ the department sets a hearing date under par.  
22       (d), the ~~clerk of the circuit court~~ department shall send a notice of hearing to the  
23       victim of the crime committed by the inmate, if the victim has submitted a card under  
24       subd. 3. requesting notification. The notice shall inform the victim that he or she may  
25       appear at the hearing scheduled under par. (d) and shall inform the victim of the

1 manner in which he or she may provide a statement concerning the modification of  
2 the inmate's bifurcated sentence in the manner provided in par. (f). ~~The clerk of the~~  
3 ~~circuit court~~ department shall make a reasonable attempt to send the notice of  
4 hearing to the last-known address of the inmate's victim, postmarked at least 10  
5 days before the date of the hearing.

6 **SECTION 8.** 302.113 (9g) (g) 3. of the statutes is amended to read:

7 302.113 **(9g)** (g) 3. The director of state courts shall design and prepare cards  
8 for ~~a victim~~ victims to send to the ~~clerk of the circuit court for the county in which~~  
9 ~~the inmate was convicted and sentenced~~ department. The cards shall have space for  
10 a victim to provide his or her name and address, the name of the applicable inmate,  
11 and any other information that the director of state courts determines is necessary.  
12 The director of state courts shall provide the cards, without charge, to clerks of circuit  
13 court. Clerks of circuit court shall provide the cards, without charge, to victims.  
14 Victims may send completed cards to the ~~clerk of the circuit court for the county in~~  
15 ~~which the inmate was convicted and sentenced~~ department. All court records or  
16 portions of records that relate to mailing addresses of victims are not subject to  
17 inspection or copying under s. 19.35 (1).

18 **SECTION 9.** 302.113 (9g) (h) of the statutes is amended to read:

19 302.113 **(9g)** (h) ~~An inmate may appeal a court's~~ The department's decision to  
20 ~~deny the inmate's petition for modification of his or her bifurcated sentence. The~~  
21 ~~state may appeal a court's decision to grant an inmate's petition for a modification~~  
22 ~~of the inmate's bifurcated sentence~~ under par. (e) may be appealed under s. 227.52.  
23 In an appeal under this paragraph, the appellate court may reverse a decision  
24 granting or denying a petition for modification of a bifurcated sentence only if it

1 determines that the ~~sentencing court~~ department erroneously exercised its  
2 discretion in granting or denying the petition.

3 **SECTION 10.** 302.113 (9g) (i) of the statutes is amended to read:

4 302.113 (9g) (i) If the program review committee denies an inmate's petition  
5 under par. (cm), the inmate may not file another petition within one year after the  
6 date of the program review committee's denial. If the program review committee  
7 approves an inmate's petition for referral to the ~~sentencing court~~ department under  
8 par. (cm) but the ~~sentencing court~~ department denies the petition, the inmate may  
9 not file another petition under par. (cm) within one year after the date of the court's  
10 department's decision.

11 **SECTION 11.** 302.113 (9g) (j) of the statutes is amended to read:

12 302.113 (9g) (j) An inmate eligible to seek modification of his or her bifurcated  
13 sentence under this subsection has a right to be represented by counsel in  
14 proceedings under this subsection. An inmate, or the department on the inmate's  
15 behalf, may apply to the state public defender for determination of indigency and  
16 appointment of counsel under s. 977.05 (4) (jm) before or after the filing of a petition  
17 with the program review committee under par. (c). If an inmate whose petition has  
18 been referred to the court department under par. (cm) is without counsel, the court  
19 department shall refer the matter to the state public defender for determination of  
20 indigency and appointment of counsel under s. 977.05 (4) (jm).

21 **SECTION 12.** 302.113 (9h) of the statutes is created to read:

22 302.113 (9h) (a) The department may relieve crowding in state prisons by  
23 release ~~releasing~~ to extended supervision certain persons serving the confinement portion  
24 of a bifurcated sentence using the sentence modification procedure described in this  
25 subsection.

1 (b) The department shall promulgate rules for the determination of whether  
2 a bifurcated sentence should be modified under this subsection.

3 (c) A person who is serving the confinement portion of a bifurcated sentence is  
4 eligible for sentence modification under this subsection if all of the following  
5 conditions are met:

6 1. The prisoner population equals or exceeds the statewide prisoner population  
7 limit promulgated by rule under s. 301.055.

8 20 ~~21~~ The person is not serving the confinement portion of a bifurcated sentence  
9 following a conviction for a felony assaultive crime.

\*\*\*\*NOTE: I took this from the special action parole release statute; is it what you  
intend? I could instead limit the release to people convicted of a crime that is classified  
as a lesser offense than a Class B felony if you would like.

10 20 ~~21~~ The prison social worker or extended supervision agent of record has reason  
11 to believe that the person will be able to maintain himself or herself while not  
12 confined without engaging in assaultive activity.

\*\*\*\*NOTE: Please review this subdivision; again, I took it from the special action  
parole release statute.

13 30 ~~31~~ The release to extended supervision date is not more than 12 months before  
14 the person's extended supervision eligibility date.

15 (d) If the conditions under pars. (b) and (c) are met, the department may modify,  
16 in the manner specified under par. (e), the sentence of any person by releasing him  
17 or her to extended supervision under this subsection, and, if the department releases  
18 the person to extended supervision, the department shall:

19 1. Notify the office of the court that participated in the trial or that accepted  
20 the person's plea of guilty or no contest, whichever is applicable.

1           2. Notify the office of the district attorney that participated in the trial of the  
2           person or that prepared for proceedings under s. 971.08 regarding the person's plea  
3           of guilty or no contest, whichever is applicable.

4           (e) The department may modify a person's bifurcated sentence under this  
5           subsection only as follows:

6           1. The department shall reduce the term of confinement in prison portion of the  
7           person's bifurcated sentence in a manner that provides for the release of the person  
8           to extended supervision within 30 days after the date on which the department  
9           modifies the bifurcated sentence.

10          2. The department shall lengthen the term of extended supervision imposed so  
11          that the total length of the bifurcated sentence originally imposed does not change.

12          **SECTION 13.** 801.50 (5) of the statutes is amended to read:

13          801.50 (5) Venue of an action for certiorari to review a probation, extended  
14          supervision, or parole revocation, a denial by a program review committee under s.  
15          302.113 (9g) of a petition for modification of a bifurcated sentence, a decision by the  
16          department of corrections under s. 302.113 (9g) on a petition for modification of a  
17          bifurcated sentence, or a refusal of parole shall be the county in which the relator was  
18          last convicted of an offense for which the relator was on probation, extended  
19          supervision, or parole or for which the relator is currently incarcerated.

20          **SECTION 14.** 911.01 (4) (c) of the statutes is amended to read:

21          911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
22          rendition; sentencing, granting or revoking probation, ~~modification of an appeal~~  
23          under s. 302.113 (9g) (h) of the department's decision under s. 302.113 (9g) (e)  
24          whether to modify a bifurcated sentence ~~under s. 302.113 (9g)~~, adjustment of a  
25          bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal



1 summonses and search warrants; hearings under s. 980.09 (2); proceedings under s.  
2 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where  
3 habeas corpus is utilized with respect to release on bail or as otherwise provided in  
4 ch. 969.

5 **SECTION 15.** 950.04 (1v) (nt) of the statutes is amended to read:

6 950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
7 bifurcated sentence and provide a statement concerning department modification of  
8 the bifurcated sentence, as provided under s. 302.113 (9g) (d).

9 **SECTION 16.** 973.01 (7) of the statutes is amended to read:

10 973.01 (7) NO DISCHARGE. The department of corrections may not discharge a  
11 person who is serving a bifurcated sentence from custody, control and supervision  
12 until the person has served the entire bifurcated sentence. The department of  
13 corrections may modify a bifurcated sentence only as provided in s. 302.113 (9g) and  
14 (9h).

15 **SECTION 17.** 973.195 (1r) (e) of the statutes is amended to read:

16 973.195 (1r) (e) Notwithstanding the confidentiality of victim address  
17 information obtained under s. 302.113 (9g) (g) 3., a district attorney who is required  
18 to send notice to a victim under par. (d) may obtain from the ~~clerk of the circuit court~~  
19 department victim address information that the victim provided to the ~~clerk~~  
20 department under s. 302.113 (9g) (g) 3.

21 **SECTION 18.** 977.05 (4) (jm) of the statutes is amended to read:

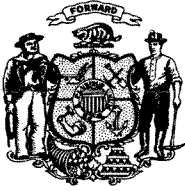
22 977.05 (4) (jm) At the request of an inmate determined by the state public  
23 defender to be indigent or upon referral of ~~a court~~ the department of corrections  
24 under s. 302.113 (9g) (j), represent the inmate in proceedings for modification of a  
25 bifurcated sentence under s. 302.113 (9g) before a program review committee and the

1 ~~sentencing court~~ department of corrections, if the state public defender determines  
2 the case should be pursued.

3 **SECTION 9311. Initial applicability; Corrections.**

4 (1) RELEASE TO EXTENDED SUPERVISION FOR MEDICAL REASONS BY DEPARTMENT OF  
5 CORRECTIONS. The treatment of sections 302.113 (9g) (cm), (d), (e), (f), (g) 2. and 3.,  
6 (h), (i), and (j), 801.50 (5), 911.01 (4) (c), 950.04 (1v) (nt), 973.195 (1r) (e), and 977.05  
7 (4) (jm) of the statutes first applies to petitions not referred by the program review  
8 committee on the effective date of this subsection.

9 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1055/P3

CMH:wlj:rs

stays

PM  
rmm

DOA:.....Steinmetz, BB0270 - Department of Corrections to permit certain releases of persons serving bifurcated sentence

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

Under current law, a person who is convicted of a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, must serve a bifurcated sentence, which includes a term of confinement in prison and a term of extended supervision in the community. Except for a person who has been convicted of a felony that is classified as Class B or above, a person who is serving the term of confinement portion of a bifurcated sentence may petition the sentencing court to release him or her to extended supervision for the remaining term of his or her sentence if the person has a terminal condition, reaches age 65 after serving at least five years of his or her term of confinement portion, or reaches age 60 after serving at least ten years of his or her term of confinement portion. Under this bill, the petition must be submitted to DOC instead of to the sentencing court.

This bill permits DOC to release to extended supervision a person serving the confinement portion of a bifurcated sentence if the person is not confined following a felony assault, the person is believed to be able to live in the community without assaulting another, and the release will not be more than 12 months before the date that the person otherwise would be eligible for release to extended supervision. If DOC releases a person, his or her term of extended supervision must be extended by the length of time he or she was originally sentenced to confinement so that the total length of the sentence does not change.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 301.03 (3) of the statutes is amended to read:

2           301.03 (3) Administer parole, extended supervision, and probation matters,  
3 except that the decision to grant or deny parole to inmates shall be made by the parole  
4 commission and the decision to revoke probation, extended supervision, or parole in  
5 cases in which there is no waiver of the right to a hearing shall be made by the  
6 division of hearings and appeals in the department of administration. The secretary  
7 may grant special action parole releases under s. 304.02. The secretary may modify  
8 a bifurcated sentence under s. 302.113 (9g) or (9h). The department shall promulgate  
9 rules establishing a drug testing program for probationers, parolees, and persons  
10 placed on extended supervision. The rules shall provide for assessment of fees upon  
11 probationers, parolees, and persons placed on extended supervision to partially  
12 offset the costs of the program.

13           **SECTION 2.** 302.113 (2) of the statutes is amended to read:

14           302.113 (2) Except as provided in subs. (3) and (9), an inmate subject to this  
15 section is entitled to release to extended supervision after he or she has served the  
16 term of confinement in prison portion of the sentence imposed under s. 973.01, as  
17 modified by the department under sub. (9g) or (9h) or as modified by the sentencing  
18 court under sub. (9g) or s. 302.045 (3m) (b) 1., 302.05 (3) (c) 2. a., or 973.195 (1r), if  
19 applicable.

20           **SECTION 3.** 302.113 (9g) (cm) of the statutes is amended to read:

1           302.113 (9g) (cm) If, after receiving the petition under par. (c), the program  
2 review committee determines that the public interest would be served by a  
3 modification of the inmate's bifurcated sentence in the manner provided under par.  
4 (f), the committee shall approve the petition for referral to the ~~sentencing court and~~  
5 ~~notify the department of its approval. The department shall then refer the inmate's~~  
6 ~~petition to the sentencing court and request the court to conduct a hearing on the~~  
7 ~~petition~~ department. If the program review committee determines that the public  
8 interest would not be served by a modification of the inmate's bifurcated sentence in  
9 the manner specified in par. (f), the committee shall deny the inmate's petition.

10           **SECTION 4.** 302.113 (9g) (d) of the statutes is amended to read:

11           302.113 (9g) (d) When ~~a court is notified by the~~ committee refers the petition  
12 under par. (c) to the department ~~that it is referring to the court an inmate's petition~~  
13 ~~for modification of the inmate's bifurcated sentence, the court~~ department shall set  
14 a hearing to determine whether the public interest would be served by a modification  
15 of the inmate's bifurcated sentence in the manner specified in par. (f). The inmate  
16 and the district attorney have the right to be present at the hearing, and any victim  
17 of the inmate's crime has the right to be present at the hearing and to provide a  
18 statement concerning the modification of the inmate's bifurcated sentence. The  
19 ~~court~~ department shall ~~order such~~ give notice of the hearing date as it considers  
20 adequate to be given to the ~~department, the~~ inmate, the attorney representing the  
21 inmate, if applicable, and the district attorney. Victim notification shall be provided  
22 as specified under par. (g).

23           **SECTION 5.** 302.113 (9g) (e) of the statutes is amended to read:

24           302.113 (9g) (e) At a hearing scheduled under par. (d), the inmate has the  
25 burden of proving by the greater weight of the credible evidence that a modification

1 of the bifurcated sentence in the manner specified in par. (f) would serve the public  
2 interest. If the inmate proves that a modification of the bifurcated sentence in the  
3 manner specified in par. (f) would serve the public interest, the ~~court~~ department  
4 shall modify the inmate's bifurcated sentence in that manner. If the inmate does not  
5 prove that a modification of the bifurcated sentence in the manner specified in par.  
6 (f) would serve the public interest, the ~~court~~ department shall deny the inmate's  
7 petition for modification of the bifurcated sentence.

8 **SECTION 6.** 302.113 (9g) (f) of the statutes is amended to read:

9 302.113 (9g) (f) ~~A court~~ The department may modify an inmate's bifurcated  
10 sentence under this section only as follows:

11 1. The ~~court~~ department shall reduce the term of confinement in prison portion  
12 of the inmate's bifurcated sentence in a manner that provides for the release of the  
13 inmate to extended supervision within 30 days after the date on which the ~~court~~  
14 ~~issues its order modifying~~ department modifies the bifurcated sentence.

15 2. The ~~court~~ department shall lengthen the term of extended supervision  
16 imposed so that the total length of the bifurcated sentence originally imposed does  
17 not change.

18 **SECTION 7.** 302.113 (9g) (g) 2. of the statutes is amended to read:

19 302.113 (9g) (g) 2. When ~~a court~~ the department sets a hearing date under par.  
20 (d), the ~~clerk of the circuit court~~ department shall send a notice of hearing to the  
21 victim of the crime committed by the inmate, if the victim has submitted a card under  
22 subd. 3. requesting notification. The notice shall inform the victim that he or she may  
23 appear at the hearing scheduled under par. (d) and shall inform the victim of the  
24 manner in which he or she may provide a statement concerning the modification of  
25 the inmate's bifurcated sentence in the manner provided in par. (f). The ~~clerk of the~~

1 ~~circuit court~~ department shall make a reasonable attempt to send the notice of  
2 hearing to the last-known address of the inmate's victim, postmarked at least 10  
3 days before the date of the hearing.

4 **SECTION 8.** 302.113 (9g) (g) 3. of the statutes is amended to read:

5 302.113 **(9g)** (g) 3. The director of state courts shall design and prepare cards  
6 for ~~a victim~~ victims to send to the clerk ~~of the circuit court for the county in which~~  
7 ~~the inmate was convicted and sentenced~~ department. The cards shall have space for  
8 a victim to provide his or her name and address, the name of the applicable inmate,  
9 and any other information that the director of state courts determines is necessary.  
10 The director of state courts shall provide the cards, without charge, to clerks of circuit  
11 court. Clerks of circuit court shall provide the cards, without charge, to victims.  
12 Victims may send completed cards to the clerk ~~of the circuit court for the county in~~  
13 ~~which the inmate was convicted and sentenced~~ department. All court records or  
14 portions of records that relate to mailing addresses of victims are not subject to  
15 inspection or copying under s. 19.35 (1).

16 **SECTION 9.** 302.113 (9g) (h) of the statutes is amended to read:

17 302.113 **(9g)** (h) ~~An inmate may appeal a court's~~ The department's decision to  
18 ~~deny the inmate's petition for modification of his or her bifurcated sentence. The~~  
19 ~~state may appeal a court's decision to grant an inmate's petition for a modification~~  
20 ~~of the inmate's bifurcated sentence~~ under par. (e) may be appealed under s. 227.52.  
21 In an appeal under this paragraph, the appellate court may reverse a decision  
22 granting or denying a petition for modification of a bifurcated sentence only if it  
23 determines that the ~~sentencing court~~ department erroneously exercised its  
24 discretion in granting or denying the petition.

25 **SECTION 10.** 302.113 (9g) (i) of the statutes is amended to read:

1           302.113 (9g) (i) If the program review committee denies an inmate's petition  
2 under par. (cm), the inmate may not file another petition within one year after the  
3 date of the program review committee's denial. If the program review committee  
4 approves an inmate's petition for referral to the ~~sentencing court~~ department under  
5 par. (cm) but the ~~sentencing court~~ department denies the petition, the inmate may  
6 not file another petition under par. (cm) within one year after the date of the court's  
7 department's decision.

8           **SECTION 11.** 302.113 (9g) (j) of the statutes is amended to read:

9           302.113 (9g) (j) An inmate eligible to seek modification of his or her bifurcated  
10 sentence under this subsection has a right to be represented by counsel in  
11 proceedings under this subsection. An inmate, or the department on the inmate's  
12 behalf, may apply to the state public defender for determination of indigency and  
13 appointment of counsel under s. 977.05 (4) (jm) before or after the filing of a petition  
14 with the program review committee under par. (c). If an inmate whose petition has  
15 been referred to the ~~court~~ department under par. (cm) is without counsel, the ~~court~~  
16 department shall refer the matter to the state public defender for determination of  
17 indigency and appointment of counsel under s. 977.05 (4) (jm).

18           **SECTION 12.** 302.113 (9h) of the statutes is created to read:

19           302.113 (9h) (a) The department may release to extended supervision certain  
20 persons serving the confinement portion of a bifurcated sentence using the sentence  
21 modification procedure described in this subsection.

22           (b) The department shall promulgate rules for the determination of whether  
23 a bifurcated sentence should be modified under this subsection.



1 (c) A person who is serving the confinement portion of a bifurcated sentence is  
2 eligible for sentence modification under this subsection if all of the following  
3 conditions are met:

4 1. The person is not serving the confinement portion of a bifurcated sentence  
5 following a conviction for a felony assaultive crime.

\*\*\*\*NOTE: I took this from the special action parole release statute; is it what you intend? I could instead limit the release to people convicted of a crime that is classified as a lesser offense than a Class B felony if you would like.

6 2. The prison social worker or extended supervision agent of record has reason  
7 to believe that the person will be able to maintain himself or herself while not  
8 confined without engaging in assaultive activity.

\*\*\*\*NOTE: Please review this subdivision; again, I took it from the special action parole release statute.

9 3. The release to extended supervision date is not more than 12 months before  
10 the person's extended supervision eligibility date.

11 (d) If the conditions under pars. (b) and (c) are met, the department may modify,  
12 in the manner specified under par. (e), the sentence of any person by releasing him  
13 or her to extended supervision under this subsection, and, if the department releases  
14 the person to extended supervision, the department shall:

15 1. Notify the office of the court that participated in the trial or that accepted  
16 the person's plea of guilty or no contest, whichever is applicable.

17 2. Notify the office of the district attorney that participated in the trial of the  
18 person or that prepared for proceedings under s. 971.08 regarding the person's plea  
19 of guilty or no contest, whichever is applicable.

20 (e) The department may modify a person's bifurcated sentence under this  
21 subsection only as follows:

1           1. The department shall reduce the term of confinement in prison portion of the  
2 person's bifurcated sentence in a manner that provides for the release of the person  
3 to extended supervision within 30 days after the date on which the department  
4 modifies the bifurcated sentence.

5           2. The department shall lengthen the term of extended supervision imposed so  
6 that the total length of the bifurcated sentence originally imposed does not change.

7           **SECTION 13.** 801.50 (5) of the statutes is amended to read:

8           801.50 (5) Venue of an action for certiorari to review a probation, extended  
9 supervision, or parole revocation, a denial by a program review committee under s.  
10 302.113 (9g) of a petition for modification of a bifurcated sentence, a decision by the  
11 department of corrections under s. 302.113 (9g) on a petition for modification of a  
12 bifurcated sentence, or a refusal of parole shall be the county in which the relator was  
13 last convicted of an offense for which the relator was on probation, extended  
14 supervision, or parole or for which the relator is currently incarcerated.

15           **SECTION 14.** 911.01 (4) (c) of the statutes is amended to read:

16           911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or  
17 rendition; sentencing, granting or revoking probation, ~~modification of an appeal~~  
18 under s. 302.113 (9g) (h) of the department's decision under s. 302.113 (9g) (e)  
19 whether to modify a bifurcated sentence under s. 302.113 (9g), adjustment of a  
20 bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal  
21 summonses and search warrants; hearings under s. 980.09 (2); proceedings under s.  
22 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where  
23 habeas corpus is utilized with respect to release on bail or as otherwise provided in  
24 ch. 969.

25           **SECTION 15.** 950.04 (1v) (nt) of the statutes is amended to read:

1           950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
2 bifurcated sentence and provide a statement concerning department modification of  
3 the bifurcated sentence, as provided under s. 302.113 (9g) (d).

4           **SECTION 16.** 973.01 (7) of the statutes is amended to read:

5           973.01 (7) NO DISCHARGE. The department of corrections may not discharge a  
6 person who is serving a bifurcated sentence from custody, control and supervision  
7 until the person has served the entire bifurcated sentence. The department of  
8 corrections may modify a bifurcated sentence only as provided in s. 302.113 (9g) and  
9 (9h).

10          **SECTION 17.** 973.195 (1r) (e) of the statutes is amended to read:

11          973.195 (1r) (e) Notwithstanding the confidentiality of victim address  
12 information obtained under s. 302.113 (9g) (g) 3., a district attorney who is required  
13 to send notice to a victim under par. (d) may obtain from the ~~clerk of the circuit court~~  
14 department victim address information that the victim provided to the ~~clerk~~  
15 department under s. 302.113 (9g) (g) 3.

16          **SECTION 18.** 977.05 (4) (jm) of the statutes is amended to read:

17          977.05 (4) (jm) At the request of an inmate determined by the state public  
18 defender to be indigent or upon referral of ~~a court~~ the department of corrections  
19 under s. 302.113 (9g) (j), represent the inmate in proceedings for modification of a  
20 bifurcated sentence under s. 302.113 (9g) before a program review committee and the  
21 ~~sentencing court~~ department of corrections, if the state public defender determines  
22 the case should be pursued.

23          **SECTION 9311. Initial applicability; Corrections.**

24          (1) RELEASE TO EXTENDED SUPERVISION FOR MEDICAL REASONS BY DEPARTMENT OF  
25 CORRECTIONS. The treatment of sections 302.113 (9g) (cm), (d), (e), (f), (g) 2. and 3.,

1 (h), (i), and (j), 801.50 (5), 911.01 (4) (c), 950.04 (1v) (nt), 973.195 (1r) (e), and 977.05  
 2 (4) (jm) of the statutes first applies to petitions not referred by the program review  
 3 committee on the effective date of this subsection.

4 (END)

(as it relates to ~~an appeal~~  
 under SO<sub>Δ</sub> 3020113 (9g) (h))

LRB-1055/P3 dn

CMH:WJ:

~~This draft is~~

~~this is reconciled~~

④ This draft reconciles LRB-1055/P3 and LRB-1768/P5.  
Both LRB-1055 and LRB-1768 should continue to  
 appear in the budget. ☺

CMH

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1055/P4dn

CMH:wlj:rs

Date

Stays

/p3

/p5

This draft reconciles LRB-1055~~/~~ and LRB-1768~~/~~. Both of these drafts should continue to appear in the compiled bill.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1055/P4dn  
CMH:wlj:rs

January 30, 2009

This draft reconciles LRB-1055/P3 and LRB-1768/P5. Both of these drafts should continue to appear in the compiled bill.

Cathlene Hanaman  
Legislative Attorney  
Phone: (608) 267-9810  
E-mail: [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1055/P4

CMH:wlj:rs

DOA:.....Steinmetz, BB0270 - Department of Corrections to permit certain releases of persons serving bifurcated sentence

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**CORRECTIONAL SYSTEM**

Under current law, a person who is convicted of a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, must serve a bifurcated sentence, which includes a term of confinement in prison and a term of extended supervision in the community. Except for a person who has been convicted of a felony that is classified as Class B or above, a person who is serving the term of confinement portion of a bifurcated sentence may petition the sentencing court to release him or her to extended supervision for the remaining term of his or her sentence if the person has a terminal condition, reaches age 65 after serving at least five years of his or her term of confinement portion, or reaches age 60 after serving at least ten years of his or her term of confinement portion. Under this bill, the petition must be submitted to DOC instead of to the sentencing court.

This bill permits DOC to release to extended supervision a person serving the confinement portion of a bifurcated sentence if the person is not confined following a felony assault, the person is believed to be able to live in the community without assaulting another, and the release will not be more than 12 months before the date that the person otherwise would be eligible for release to extended supervision. If DOC releases a person, his or her term of extended supervision must be extended by the length of time he or she was originally sentenced to confinement so that the total length of the sentence does not change.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 302.113 (9g) (cm) of the statutes is amended to read:

2       302.113 **(9g)** (cm) If, after receiving the petition under par. (c), the program  
3 review committee determines that the public interest would be served by a  
4 modification of the inmate's bifurcated sentence in the manner provided under par.  
5 (f), the committee shall approve the petition for referral to the sentencing court and  
6 ~~notify the department of its approval. The department shall then refer the inmate's~~  
7 ~~petition to the sentencing court and request the court to conduct a hearing on the~~  
8 ~~petition~~ department. If the program review committee determines that the public  
9 interest would not be served by a modification of the inmate's bifurcated sentence in  
10 the manner specified in par. (f), the committee shall deny the inmate's petition.

11       **SECTION 2.** 302.113 (9g) (d) of the statutes is amended to read:

12       302.113 **(9g)** (d) When ~~a court is notified by the~~ committee refers the petition  
13 under par. (c) to the department that it is referring to the court an inmate's petition  
14 ~~for modification of the inmate's bifurcated sentence, the court~~ department shall set  
15 a hearing to determine whether the public interest would be served by a modification  
16 of the inmate's bifurcated sentence in the manner specified in par. (f). The inmate  
17 and the district attorney have the right to be present at the hearing, and any victim  
18 of the inmate's crime has the right to be present at the hearing and to provide a  
19 statement concerning the modification of the inmate's bifurcated sentence. The  
20 ~~court~~ department shall ~~order such~~ give notice of the hearing date as it considers  
21 adequate to be given to the ~~department, the inmate, the attorney representing the~~



1 inmate, if applicable, and the district attorney. Victim notification shall be provided  
2 as specified under par. (g).

3 **SECTION 3.** 302.113 (9g) (e) of the statutes is amended to read:

4 302.113 (9g) (e) At a hearing scheduled under par. (d), the inmate has the  
5 burden of proving by the greater weight of the credible evidence that a modification  
6 of the bifurcated sentence in the manner specified in par. (f) would serve the public  
7 interest. If the inmate proves that a modification of the bifurcated sentence in the  
8 manner specified in par. (f) would serve the public interest, the ~~court~~ department  
9 shall modify the inmate's bifurcated sentence in that manner. If the inmate does not  
10 prove that a modification of the bifurcated sentence in the manner specified in par.  
11 (f) would serve the public interest, the ~~court~~ department shall deny the inmate's  
12 petition for modification of the bifurcated sentence.

13 **SECTION 4.** 302.113 (9g) (f) of the statutes is amended to read:

14 302.113 (9g) (f) ~~A court~~ The department may modify an inmate's bifurcated  
15 sentence under this section only as follows:

16 1. The ~~court~~ department shall reduce the term of confinement in prison portion  
17 of the inmate's bifurcated sentence in a manner that provides for the release of the  
18 inmate to extended supervision within 30 days after the date on which the ~~court~~  
19 ~~issues its order modifying~~ department modifies the bifurcated sentence.

20 2. The ~~court~~ department shall lengthen the term of extended supervision  
21 imposed so that the total length of the bifurcated sentence originally imposed does  
22 not change.

23 **SECTION 5.** 302.113 (9g) (g) 2. of the statutes is amended to read:

24 302.113 (9g) (g) 2. When ~~a court~~ the department sets a hearing date under par.  
25 (d), the ~~clerk of the circuit court~~ department shall send a notice of hearing to the

1 victim of the crime committed by the inmate, if the victim has submitted a card under  
2 subd. 3. requesting notification. The notice shall inform the victim that he or she may  
3 appear at the hearing scheduled under par. (d) and shall inform the victim of the  
4 manner in which he or she may provide a statement concerning the modification of  
5 the inmate's bifurcated sentence in the manner provided in par. (f). ~~The clerk of the~~  
6 ~~circuit court~~ department shall make a reasonable attempt to send the notice of  
7 hearing to the last-known address of the inmate's victim, postmarked at least 10  
8 days before the date of the hearing.

9 **SECTION 6.** 302.113 (9g) (g) 3. of the statutes is amended to read:

10 302.113 (9g) (g) 3. The director of state courts shall design and prepare cards  
11 for ~~a victim~~ victims to send to the ~~clerk of the circuit court for the county in which~~  
12 ~~the inmate was convicted and sentenced~~ department. The cards shall have space for  
13 a victim to provide his or her name and address, the name of the applicable inmate,  
14 and any other information that the director of state courts determines is necessary.  
15 The director of state courts shall provide the cards, without charge, to clerks of circuit  
16 court. Clerks of circuit court shall provide the cards, without charge, to victims.  
17 Victims may send completed cards to the ~~clerk of the circuit court for the county in~~  
18 ~~which the inmate was convicted and sentenced~~ department. All court records or  
19 portions of records that relate to mailing addresses of victims are not subject to  
20 inspection or copying under s. 19.35 (1).

21 **SECTION 7.** 302.113 (9g) (h) of the statutes is amended to read:

22 302.113 (9g) (h) ~~An inmate may appeal a court's~~ The department's decision to  
23 ~~deny the inmate's petition for modification of his or her bifurcated sentence. The~~  
24 ~~state may appeal a court's decision to grant an inmate's petition for a modification~~  
25 ~~of the inmate's bifurcated sentence~~ under par. (e) may be appealed under s. 227.52.

1 In an appeal under this paragraph, the ~~appellate~~ court may reverse a decision  
2 granting or denying a petition for modification of a bifurcated sentence only if it  
3 determines that the ~~sentencing court~~ department erroneously exercised its  
4 discretion in granting or denying the petition.

5 **SECTION 8.** 302.113 (9g) (i) of the statutes is amended to read:

6 302.113 **(9g)** (i) If the program review committee denies an inmate's petition  
7 under par. (cm), the inmate may not file another petition within one year after the  
8 date of the program review committee's denial. If the program review committee  
9 approves an inmate's petition for referral to the ~~sentencing court~~ department under  
10 par. (cm) but the ~~sentencing court~~ department denies the petition, the inmate may  
11 not file another petition under par. (cm) within one year after the date of the ~~court's~~  
12 department's decision.

13 **SECTION 9.** 302.113 (9g) (j) of the statutes is amended to read:

14 302.113 **(9g)** (j) An inmate eligible to seek modification of his or her bifurcated  
15 sentence under this subsection has a right to be represented by counsel in  
16 proceedings under this subsection. An inmate, or the department on the inmate's  
17 behalf, may apply to the state public defender for determination of indigency and  
18 appointment of counsel under s. 977.05 (4) (jm) before or after the filing of a petition  
19 with the program review committee under par. (c). If an inmate whose petition has  
20 been referred to the ~~court~~ department under par. (cm) is without counsel, the ~~court~~  
21 department shall refer the matter to the state public defender for determination of  
22 indigency and appointment of counsel under s. 977.05 (4) (jm).

23 **SECTION 10.** 302.113 (9h) of the statutes is created to read:

1           302.113 (9h) (a) The department may release to extended supervision certain  
2 persons serving the confinement portion of a bifurcated sentence using the sentence  
3 modification procedure described in this subsection.

4           (b) The department shall promulgate rules for the determination of whether  
5 a bifurcated sentence should be modified under this subsection.

6           (c) A person who is serving the confinement portion of a bifurcated sentence is  
7 eligible for sentence modification under this subsection if all of the following  
8 conditions are met:

9           1. The person is not serving the confinement portion of a bifurcated sentence  
10 following a conviction for a felony assaultive crime.

11           2. The prison social worker or extended supervision agent of record has reason  
12 to believe that the person will be able to maintain himself or herself while not  
13 confined without engaging in assaultive activity.

14           3. The release to extended supervision date is not more than 12 months before  
15 the person's extended supervision eligibility date.

16           (d) If the conditions under pars. (b) and (c) are met, the department may modify,  
17 in the manner specified under par. (e), the sentence of any person by releasing him  
18 or her to extended supervision under this subsection, and, if the department releases  
19 the person to extended supervision, the department shall:

20           1. Notify the office of the court that participated in the trial or that accepted  
21 the person's plea of guilty or no contest, whichever is applicable.

22           2. Notify the office of the district attorney that participated in the trial of the  
23 person or that prepared for proceedings under s. 971.08 regarding the person's plea  
24 of guilty or no contest, whichever is applicable.

1 (e) The department may modify a person's bifurcated sentence under this  
2 subsection only as follows:

3 1. The department shall reduce the term of confinement in prison portion of the  
4 person's bifurcated sentence in a manner that provides for the release of the person  
5 to extended supervision within 30 days after the date on which the department  
6 modifies the bifurcated sentence.

7 2. The department shall lengthen the term of extended supervision imposed so  
8 that the total length of the bifurcated sentence originally imposed does not change.

9 **SECTION 11.** 801.50 (5) of the statutes is amended to read:

10 801.50 (5) Venue of an action for certiorari to review a probation, extended  
11 supervision, or parole revocation, a denial by a program review committee under s.  
12 302.113 (9g) of a petition for modification of a bifurcated sentence, a decision by the  
13 department of corrections under s. 302.113 (9g) on a petition for modification of a  
14 bifurcated sentence, or a refusal of parole shall be the county in which the relator was  
15 last convicted of an offense for which the relator was on probation, extended  
16 supervision, or parole or for which the relator is currently incarcerated.

17 **SECTION 12.** 950.04 (1v) (nt) of the statutes is amended to read:

18 950.04 (1v) (nt) To attend a hearing on a petition for modification of a  
19 bifurcated sentence and provide a statement concerning department modification of  
20 the bifurcated sentence, as provided under s. 302.113 (9g) (d).

21 **SECTION 13.** 977.05 (4) (jm) of the statutes is amended to read:

22 977.05 (4) (jm) At the request of an inmate determined by the state public  
23 defender to be indigent or upon referral of ~~a court~~ the department of corrections  
24 under s. 302.113 (9g) (j), represent the inmate in proceedings for modification of a  
25 bifurcated sentence under s. 302.113 (9g) before a program review committee and the

1 ~~sentencing court~~ department of corrections, if the state public defender determines  
2 the case should be pursued.

3 **SECTION 9311. Initial applicability; Corrections.**

4 (1) RELEASE TO EXTENDED SUPERVISION FOR MEDICAL REASONS BY DEPARTMENT OF  
5 CORRECTIONS. The treatment of sections 302.113 (9g) (cm), (d), (e), (f), (g) 2. and 3.,  
6 (h), (i), and (j), 801.50 (5), 911.01 (4) (c) (as it relates to an appeal under s. 302.113  
7 (9g) (h)), 950.04 (1v) (nt), and 977.05 (4) (jm) of the statutes first applies to petitions  
8 not referred by the program review committee on the effective date of this subsection.

9 (END)